IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Civil Application No. 03 of 2005
in
Contempt Petition No.282 of 2004
in
Writ Petition No. 570 of 2003

1. Mushir Khan Amir Khan
and others ..Petitioners

vs.

1. Smt.Khairunnissa Z.Bukhari
since deceased and others ..Respondents

Smt.Sindha Shreedharan for petitioners.
Smt.F.R.Shaikh for respondent nos. 1 to 7
Shri P.G.Karande for respondent no.8

CORAM: A.M.KHANWILKAR J.
10th January, 2006

P.C.

1. Heard counsel for the parties.

2. In terms of order dated 6th May, 2005, report dated 21st July, 2005 has been submitted by the Court Commissioner which discloses existence of the subject structure on the disputed property.

3. By way of this application, the petitioners pray that the Court Receiver be appointed inrespect of the disputed property so as to secure the rights of the petitioners before this Court. Counsel for the petitioners has placed reliance on the order passed by this Court on 6th May, 2005 that such

relief being ancilliary in the contempt petition can be granted. Indeed, the petitioners may be justified in contending that even in the contempt proceedings it is open to the court to pass ancilliary reliefs. However, in the present case it is not in dispute that civil suit is pending between the parties before the Trial Court. The relief which is sought in the present civil application can be effectively answered if such prayer was to be made in the Trial Court in the pending civil suit. In the circumstances, instead of going into the contentious issue with regard to the relief prayed for in the present application, in my opinion, proper course is to allow the petitioners to withdraw the present application and instead to revive the request before the civil court where the suit is stated to be pending between the parties so that all aspects of the matter in relation to the question of passing appropriate order with regard to the relief of appointment of the court receiver during the pendency of the suit can be considered by that Court. Counsel for the petitioners submits that respondent nos. 8 and 8a in the present application are not parties to the suit and are entrusted with the development activities. Even so, that will not preclude the petitioners to ask for appropriate relief in the proposed application

to be filed in the pending suit and which request can be considered by the trial court in accordance with law. In other words, while disposing of this application, all questions are left open with liberty to the petitioners to place on record the pleadings filed by the parties to the present application before this Court including the Commissioner's report dated 21st July, 2005 to facilitate the trial court to pass appropriate orders as may be advised. It is made clear that the issues which are relevant for deciding the contempt petition will be considered on its own merits in the pending contempt petition which is already admitted. It is further made clear that in the event the petitioners take out the proposed application before the trial court the same be decided as expeditiously as possible preferably within 8 weeks from the date of its presentation. This is so because the pleadings with regard to the issue of appointment of the Court Receiver are already completed before this court and such application can be decided on that basis with liberty to the parties to file further pleadings as may be advised within two weeks from the date of presentation of the proposed application.

4. Application disposed of accordingly.